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No. 88-673

In The

Supreme Court of the United States

October Term, 1988

EVELYN JORDAN,

Petitioner,

v.

DONALD P. HODEL, SECRETARY OF THE INTERIOR,

Respondent.

On Petition For A Writ of Certiorari To The United States Court of Appeals For The Ninth Circuit

PETITIONER'S REPLY TO RESPONDENT'S OPPOSITION

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Either the Civil Rights Act, or the Seventh Amendment, or both, requires a jury trial upon demand by one of the parties.

This Court has now accepted *Runyan v. McCrary* for reconsideration. This Civil Rights case was cited at 427 US 160, 170, and 96 Supreme Court Reporter 2586, 2594 (US 1975). The significance of *Runyan Supra* to the instant case is the clarification of claimant's right to receive

monetary awards or damages and, therefore, a right to a jury trial in Civil Rights litigation.

It is respectfully submitted that, in the instant case, back pay is a legal issue. Damages are a legal issue. Loss of Retirement Benefits are a legal issue. Punitive Damages are a legal issue. When we are trying these important legal issues either the Civil Rights Act, or the Seventh Amendment, or both, requires a jury trial upon demand by one of the parties.

In the instant case, petitioner's Appendix illustrates that a trial by jury was demanded simultaneously with filing the original complaint, was recognized and approved by the Trial Judge in three (3) different Minute Orders, and then was taken away from the petitioner three (3) weeks before the trial through the Government's Pre-Trial Motion, which was opposed. The first point that petitioner raised in her Statement of Issues presented for review to the Ninth Circuit was, did the Court err in failing to allow petitioner to have her case heard by a jury? Petitioner has not waived her right to a jury trial in this case.

Respondent made reference to the Trial Court's ruling for Partial Summary Judgment. The Trial Court entered that ruling upon default because petitioner's attorney filed her opposition one (1) day late. A complete review of that opinion, however, goes on to state that the Judge left the question of constructive discharge and damages to be litigated at trial. Damages, again, reaffirm petitioner's right to a jury trial.

Title VII is to protect Government Employees from discrimination on the basis of race, color, religion, sex, or

national origin. 42 USC § 2000(e) - 16(a) (1982). In cases like *Runyan Supra* and in this case, this Honorable Court should recognize that there needs to be uniformity among the Circuits in recognizing each petitioner's right to a jury trial in Civil Rights actions.

Petitioner believes that she has correctly stated the burden of proof that should have been applied in the trial of her case.

DATED this 29th day of December, 1988.

Pestinger, Donovan & Melvin
Attorneys for Petitioner

By: R. SAM PESTINGER